

## SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION

### PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

Sec.

870.1 Scope.

870.5 Definitions.

870.10 Information collection.

870.11 Applicability.

870.12 Reclamation fee.

870.13 Fee rates.

870.14 Determination of percentage-based fees.

870.15 Reclamation fee payment.

870.16 Production records.

870.17 Filing the OSM-1 Form electronically.

870.18 General rules for calculating excess moisture.

870.19 How to calculate excess moisture in HIGH-rank coals.

870.20 How to calculate excess moisture in LOW-rank coals.

AUTHORITY: 28 U.S.C. 1746, 30 U.S.C. 1201 *et seq.*, and Pub. L. 105-277.

SOURCE: 47 FR 28593, June 30, 1982, unless otherwise noted.

#### § 870.1 Scope.

This part sets out the procedures for the collection of fees for the Abandoned Mine Reclamation Fund.

#### § 870.5 Definitions.

As used in part 870 through 888 of this subchapter—

*Abandoned Mine Reclamation Fund* or *Fund* means a special fund established on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by Title IV of the Act.

*Agency* means the State agency designated by the Governor, or in the case of Indian tribes, the Tribal agency designated by the equivalent head of an Indian tribe, to administer the State/Indian tribe reclamation program and to receive and administer grants under this part.

*Allocate* means the administrative identification in the records of OSM of moneys in the fund for a specific purpose, e.g., identification of moneys for exclusive use by a State.

*Anthracite, bituminous and subbituminous coal* means all coals other than lignite coal.

*Calendar quarter* means a 3-month period within a calendar year. The first calendar quarter begins on January 1 of the calendar year and ends on the last day of March. The second calendar quarter begins on the first day of April and ends on the last day of June. The third calendar quarter begins on the first day of July and ends on the last day of September. The fourth calendar quarter begins on the first day of October and ends on the last day of December.

*Eligible lands and water* means land and water eligible for reclamation or drainage abatement expenditures which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing reclamation responsibility. Provided, however, that lands and water damaged by coal mining operations after that date and on or before November 5, 1990, may also be eligible for reclamation if they meet the requirements specified in 30 CFR 874.12 (d) and (e). Following certification of the completion of all known coal problems, eligible lands and water for noncoal reclamation purposes are those sites that meet the eligibility requirements specified in 30 CFR 874.14. For additional eligibility requirements for water projects, see 30 CFR 874.14, and for lands affected by remining operations, see Section 404 of the Act.

*Emergency* means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

*Excess moisture* means the difference between total moisture and inherent moisture, calculated according to

## Surface Mining Reclamation and Enforcement, Interior

## § 870.5

§ 870.19 for high-rank coals or the difference between total moisture and inherent moisture calculated according to § 870.20 for low-rank coals.

*Expended* means that moneys have been obligated, encumbered, or committed for reclamation by contract by the OSM, State, or Tribe for work to be accomplished or services to be rendered.

*Extreme danger* means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

*Fee compliance officer* means any person authorized by the Secretary to exercise authority in matters relating to this part.

*In situ coal mining* means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, bore hole mining, and fluid recovery mining. At this time, part 870 considers only in situ gasification.

*Indian Abandoned Mine Reclamation Fund* or *Indian Fund* means a separate fund established by an Indian tribe for the purpose of accounting for moneys granted by the Director under an approved Indian Reclamation Program and other moneys authorized by these regulations to be deposited in the Indian Fund.

*Indian reclamation program* means a program established by an Indian tribe in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

*Inherent moisture* means moisture that exists as an integral part of the coal seam in its natural state, including water in pores, but excluding that present in macroscopically visible fractures, as determined according to § 870.19(a) or § 870.20(a).

*Left or abandoned in either an unreclaimed or inadequately reclaimed condition* means lands and water:

(a) Which were mined or which were affected by such mining, wastebanks,

processing or other mining processes prior to August 3, 1977, or between August 3, 1977 and November 5, 1990, as authorized pursuant to Section 402(g)(4) of the Act, and on which all mining has ceased;

(b) Which continue, in their present condition, to degrade substantially the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

(c) For which there is no continuing reclamation responsibility under State or Federal Laws, except as provided in Sections 402(g)(4) and 403(b)(2) of the Act.

*Lignite coal* means consolidated lignite coal having less than 8,300 British thermal units per pound, moist and mineral-matter-free. Moist, mineral-matter free British thermal units per pound are determined by Parr's formula, equation 3, on page 222 of "Standard Specification for Classification of Coals by Rank," in American Society for Testing and Materials ASTM D 388-77 (Philadelphia, 1977). Parr's formula follows:

$$\text{Moist, Mn-Free Btu} = (\text{Bu} - 50\text{S}) / [100 - (1.08\text{A} + 0.55\text{S})] \times 100$$

where:

Mn = Mineral matter

Btu = British thermal units per pound (calorific value)

A = percentage of ash, and

S = percentage of sulfur

"Moist" refers to coal containing its natural inherent or bed moisture, but not including water adhering to the surface of the coal.

*Mineral owner* means any person or entity owning 10 percent or more of the mineral estate for a permit. If no single mineral owner meets the 10 percent rule, then the largest single mineral owner shall be considered to be the mineral owner. If there are several persons who have successively transferred the mineral rights, information shall be provided on the last owner(s) in the chain prior to the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal.

*OSM* means the Office of Surface Mining Reclamation and Enforcement.

*Permanent facility* means any structure that is built, installed or established to serve a particular purpose or

any manipulation or modification of the surface that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

*Project* means a delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a State or within a logical, geographically defined area, such as a watershed, conservation district, or county planning area.

*Qualified hydrologic unit* means a hydrologic unit:

(a) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(b) That contains lands and waters which are:

(1) Eligible pursuant to Section 404 and include any of the first three priorities stated in Section 403(a); or

(2) Proposed to be the subject of the expenditures by the State (from amounts available from the forfeiture of a bond required under Section 509 or from other State sources) to mitigate acid mine drainage.

*Reclaimed coal* means coal recovered from a deposit that is not in its original geological location, such as refuse piles or culm banks or retaining dams and ponds that are or have been used during the mining or preparation process, and stream coal deposits. Reclaimed coal operations are considered to be surface coal mining operations for fee liability and calculation purposes.

*Reclamation activity* means the reclamation, abatement, control, or prevention of adverse effects of past mining.

*Reclamation plan* means a plan submitted and approved under part 884 of this chapter.

*State Abandoned Mine Reclamation Fund* or *State Fund* means a separate fund established by a State for the purpose of accounting for moneys granted by the Director under an approved State Reclamation Program and other moneys authorized by these regulations to be deposited in the State Fund.

*State reclamation program* means a program established by a State in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants.

*Surface coal mining* means the extraction of coal from the earth by removing the materials over the coal seam before recovering the coal and includes auger coal mining. For purposes of subchapter R, reclaiming coal operations are considered surface coal mining.

*Ton* means 2,000 pounds avoirdupois (0.90718 metric ton).

*Total moisture* means the measure of weight loss in an air atmosphere under rigidly controlled conditions of temperature, time and air flow, as determined according to either § 870.19(a) or § 870.20(a).

*Underground coal mining* means the extraction of coal from the earth by developing entries from the surface to the coal seam before recovering the coal by underground extraction methods, and includes in situ mining.

*Value* means gross value at the time of initial bona fide sale, transfer of ownership, or use by the operator, but does not include the reclamation fee required by this part.

[47 FR 28593, June 30, 1982, as amended at 53 FR 19726, May 27, 1988; 59 FR 28168, May 31, 1994; 60 FR 9980, Feb. 22, 1995; 62 FR 60142, Nov. 6, 1997]

EFFECTIVE DATE NOTE: At 59 FR 60318, Nov. 23, 1994, in § 870.5, "The definition of *Qualified hydrologic unit* is suspended in so far as it does not require a hydrologic unit to be both:

(1) Eligible pursuant to Section 404 and include any of the first three priorities stated in Section 403(a), and

(2) Proposed to be the subject of expenditures by the State (from amounts available from the forfeiture of a bond required under Section 509 or from other State sources) to mitigate acid mine drainage in order to be considered a qualified hydrologic unit."

#### § 870.10 Information collection.

The collections of information contained in part 870 and the Form OSM-1 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1029-0090 and 1029-0063 respectively. The information will be